principal case. Thus statutes provide that he shall have a lien upon the crops grown on the land by any party in possession.[21]

D. J. W.

PROPERTY: ADVERSE POSSESSION: ADMISSION OF TITLE IN ANOTHER.—In the recent case of *Mills v. Laing*,[1] the court was of the opinion that one of the essential elements necessary to create an effective title by adverse possession, namely "hostile" possession, was lacking and accordingly that the defendant had not acquired such a title to the land in controversy.

It is elementary that the term "hostile possession" does not contain any idea of animus or ill will toward any one.[2] It merely means exclusive possession; possession plus a claim of right which the claimant asserts is subordinate to no other claim.[3] It was contended in the principal case, and the contention was upheld by the court, that the defendant by saying that title was in another, had admitted that she was holding under that other. But does that necessarily follow? In a large percentage of cases of adverse possession, the claimant knows that title is in another, though he does not always know who that other is. In many cases of ouster, it is self-evident that the disseisor knows that the disseisee has a better legal right to the land than he has. Yet does this prevent him from acquiring the land by adverse possession? The very essence of the idea of adverse possession is that the claimant, while he may recognize that the legal title is in another (though this is not necessary) still holds the land as his own and in opposition, but not subordinate, to the title to which his possession is alleged to be adverse.[4] Of course, the moment the claimant admits that he holds the land as tenant of another, or as licensee of another, or by his permission, or in any way subject to another's title, his claim is no longer adverse to that other; he is then simply holding the land under the other party, as his tenant, licensee, or by his permission.[5] And in such a case the statute cannot run in his favor against the one whom the claimant admits he is holding under. As the court said in the principal case, any evidence of the recognition of the title of another is always admissible to show the real character of the possession.[6] And even if a declaration be made by the claimant after the statutory period has expired, such declaration may be admissible as bearing on

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[21] Alabama, Arkansas and Iowa are among the states allowing a lien on the crops regardless of who is in possession. See note, Ann. Cas. 1916E, 826.

[1] 27 Cal. App. Dec. 717.

[2] Ballard v. Hansen (1892) 33 Neb. 861, 51 N. W. 295.

[3] Long v. Mast (1849) 11 Pa. St. 189.

[4] Supra, n. 3.

[5] Angell, Limitations, § 384.

[6] Dillon v. Center (1886) 68 Cal. 561, 10 Pac. 176.

the question whether the claimant's possession was in fact hostile.[7]

It must be admitted that not a few expressions scattered through text-books seem to strengthen the proposition that mere declarations disclaiming title may defeat acquisition of title by adverse possession.[8] And there is a considerable number of cases in various jurisdictions, including our own, which have, by their language, seemingly adopted that proposition.[9] No attempt is here being made to reconcile the irreconcilable. But it would seem clear that a mere admission that another has the legal title is not an admission that one's claim is subordinate to the holder of that legal title.[10] Whatever the defendant in the principal case acknowledged, whatever she said by way of acknowledgment, she still maintained her possession. It was the possession which, if unlawful, wronged the other, not the motive or belief of the possessor.[11] Where one knows that another claims and is enjoying what belongs to him, and neglects without excuse to prosecute his claim, he will be barred by the statute.[12] Any other result "subordinates the plain letter of positive law to a fanciful effect of motive or belief on the part of the adverse claimant."[13]

H. S. J.

TRADEMARKS: RELATION OF TRADEMARK INFRINGEMENT TO THE LAW OF UNFAIR COMPETITION.—There are few clearer or more interesting examples of the influence of equitable principles upon the common law than that shown in the change in the American law respecting property rights in trademarks. When one man infringed the trademark of another it used to be said that the latter had a property right "in the trademark" which the former had violated, and for which violation he must answer in damages.[1] It followed as a consequence that if the trademark was property at all it was property everywhere, and that "the manufacturer who has adopted and used a trademark has the same right in it at New York or San Francisco that he had at

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[7] Jones v. Williams (1896) 108 Ala. 282, 19 So. 317.

[8] "Third. The continuity of possession may be broken by a recognition of the owner's title during the period that the statute was running." 2 Wood, Lim. (4th ed.) p. 1309. But the author after giving the variety of modes in which such recognition may be accomplished, adds, "or in any way which admits the superiority of the owner's title, and that the occupant holds under, for, or in subservience to him."

[9] Dill v. Westbrook (1910) 226 Pa. 217, 75 Atl. 252. See dictum in McCracken v. San Francisco (1860) 16 Cal. 591 (cited in the principal case).

[10] McAllister v. Hartzell (1899) 60 Ohio St. 69, 53 N. E. 715.

[11] Supra, n. 10; French v. Pearce, 8 Conn. 439, 21 Am. Dec. 680.

[12] Drayton v. Marshall (1839) 1 Rice Eq. (S. C.) 373, 33 Am. Dec. 84.

[13] Supra, n. 10.

[1] Derringer v. Plate (1865) 29 Cal. 292.